



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Via Electronic Mail

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RE: MUR 7973 (formerly RR 21L-48)
Burgess 4 Utah and Paul Kilgore
in his official capacity as treasurer

Dear Ms. Johnson:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that your client, Burgess 4 Utah and Paul Kilgore in his official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On July 29, 2021, the Commission notified the Committee that it was being referred to the Commission's Office of General Counsel for possible enforcement action under 52 U.S.C. § 30109. On March 22, 2022, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30116(f), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that the Committee has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

Jessica Furst Johnson
MUR 7973 (Burgess 4 Utah)
Page 2

probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law.

Enclosed is a conciliation agreement for your consideration, which includes a civil penalty.

If the Committee is interested in engaging in pre-probable cause conciliation, please contact Kimberly D. Hart, the attorney assigned to this matter, at (202) 694-1618 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if the Committee is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

We look forward to your response.

On behalf of the Commission,



Allen Dickerson
Chairman

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Burgess 4 Utah and Paul Kilgore
in his official capacity as treasurer

MUR 7973

I. INTRODUCTION

This matter was generated from information ascertained by the Federal Election Commission (“Commission”) in the normal course of carrying out its supervisory responsibilities.¹ The Reports Analysis Division (“RAD”) referred Burgess 4 Utah and Paul Kilgore in his official capacity as treasurer (the “Committee”) to the Office of General Counsel (“OGC”) for failing to timely refund, redesignate, or reattribute \$92,604.26 in excessive contributions received for the 2020 general election.² The Committee acknowledges the violations but explains that it made some additional refunds in a timely manner prior to the Referral, which would decrease the total amount in violation cited in the Referral. It also notes that since the date of the Referral, it has refunded all of the remaining excessive contributions identified by RAD, albeit late. The Committee further explains that it has replaced its compliance firm that handled the Committee’s disclosure reports at the time of the violations with a more experienced vendor who has instituted controls and safeguards to ensure that these errors do not reoccur.³

For the reasons set forth below, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30116(f) of the Federal Election Campaign Act of 1971, as amended (the “Act”) by knowingly accepting excessive contributions that it failed to timely refund, reattribute, or redesignate.

¹ See 52 U.S.C. § 30109(a)(2).

² RAD Referral 21L-48 at 1 (Burgess 4 Utah) (Nov. 29, 2021) (“Referral”).

³ Burgess 4 Utah Resp. at 1-2 (Sept. 13, 2021) (“Resp.”).

II. FACTUAL BACKGROUND

Burgess Owens was a candidate for Utah's Fourth Congressional District during the 2020 election cycle.⁴ He won the general election and is now a candidate for reelection in 2022.⁵ His principal campaign committee is Burgess 4 Utah.⁶ The Committee's current treasurer is Paul Kilgore, and its cash on hand as of September 30, 2021 is \$542,648.94.⁷

In 2020, the Committee received \$92,604.26 in contributions from 37 individuals and one multicandidate committee that appeared to exceed the limits set forth in the Act.⁸ The contributions at issue appeared on the Committee's 2020 July Quarterly, 2020 October Quarterly, and 2020 30-Day Post General Reports. For each of these reports, RAD sent Requests for Additional Information ("RFAIs") stating the relevant contributions limits, reminding the Committee of the requirement to remedy the excessive contributions identified from each respective report, and requesting that the Committee inform the Commission of any corrective action in writing and by providing copies of refund checks or reattribution/redesignation letters.⁹ In response to the RFAIs, the Committee filed amendments disclosing late refunds, redesignations, and reattributions for many but not all of the excessive contributions identified.¹⁰ Additional refunds were disclosed on the Committee's 2021 April Quarterly Report.¹¹

⁴ Burgess Owens, Statement of Candidacy at 1 (Nov. 4, 2019).

⁵ Burgess Owens, Statement of Candidacy at 1 (Jan. 21, 2021).

⁶ Burgess 4 Utah, Amended Statement of Organization (Jan. 29, 2020).

⁷ Burgess 4 Utah, Financial Summary, <https://www.fec.gov/data/committee/C00725853/?tab=summary&cycle=2020> (last accessed Nov. 17, 2021).

⁸ See Referral at 1 and Attach. 2.

⁹ *Id.* at 2-3; RFAIs for 2020 July Quarterly Rpt., 2020 October Quarterly Rpt., and 2020 Post-General Rpt. (Aug. 10, 2020, Dec. 15, 2020, and Mar. 4, 2021).

¹⁰ Referral at 2-4. The Committee did not file written responses to the RFAIs.

¹¹ The Referral states that some of the refunds were issued on March 31, 2021. *Id.* at 3 and Attach. 2.

According to RAD's records, it took the Committee between 79 and 262 days to refund, reattribute, or redesignate the excessive contributions.¹² At the time of the referral, \$15,829.41 of the total excessive amount still remained unremedied.¹³

In its Response, the Committee acknowledges its failure to timely remedy most of the contributions cited in the Referral, but explains that it had refunded an additional \$14,000 in contributions prior to the Referral date.¹⁴ Specifically, it states that it issued three timely refunds: one was issued 31 days after receipt, another was 33 days after receipt, and the third was refunded on the same date the excessive contribution was received.¹⁵ However, these refunds have yet to be disclosed on any amendments or recent reports filed with the Commission.¹⁶ Additionally, the Committee states that another \$1,829.41 of the total excessive amounts listed in the Referral was late refunded on August 23, 2021, after the date of the Referral. The Committee claims that with the yet to be reported refunds, the Committee no longer has any outstanding excessive contributions that still need to be remedied.¹⁷

The Committee asserts that its failure to timely remedy the excessive contributions was partly because during the early stages of the campaign it was using the services of a less experienced firm that was not capable of handling large amounts of fundraising activity, which

¹² *Id.* at Attach. 2. Earlier this year, the Committee paid \$3,984 in administrative fines to the Commission for the failure to file 48-hour notices for contributions totaling \$33,800. *See* Reason to Believe Recommendation Memorandum (Apr. 27, 2021) and Status of Payment Rpt., AF 4201(Burgess for Utah).

¹³ Referral at Attach. 2.

¹⁴ Resp. at 1-2.

¹⁵ Those refunds were listed as follows in the Committee's Response: Todd Ricketts, \$5,600 on 7/29/20, Refunded 8/29/20 (31 days); Joel Marcus, \$2,800 on 9/25/20, Refunded on 10/27/20 (33 days); and James Porter, \$5,600 on 11/13/20, Refunded on 11/13.20 (0 days). *Id.* at 1.

¹⁶ The Committee filed its most recent amendments with the Commission in March 2021, but those amended reports did not include these refunds. *See* Amended 2020 October Quarterly Rpt. (Mar. 12, 2021) and Amended 2020 Post-General Rpt. (Mar. 15, 2021).

¹⁷ Resp. at 2.

resulted in compliance issues.¹⁸ The Committee explains that it replaced that firm with a more experienced compliance vendor and a new treasurer in December 2020.¹⁹ The Response states that the new vendor instituted “new processes and safeguards to ensure proper compliance going forward,” including “compiling lists of “maxed out” donors” and instituting a process to remedy excessive contributions and file amendments with the Commission.²⁰ The Committee also proceeded to refund excessive contributions as its “cashflow permitted.”²¹ The Committee asks the Commission to consider this information as mitigating factors in this matter.²²

III. LEGAL ANALYSIS

The Act limits the amount an individual may contribute to a candidate’s authorized committee per election,²³ and likewise, the Act prohibits any candidate or committee from knowingly accepting an excessive contribution.²⁴ During the 2020 election cycle, the Act and Commission regulations limited an authorized committee to accepting a total of \$2,800 per election from any individual and \$5,000 from a multicandidate committee.²⁵

When a committee receives a contribution that on its face exceeds the limits or which exceeds the limits when aggregated with other contributions from the same contributor, the Commission’s regulations give the committee 60 days from the date of contribution receipt to

¹⁸ *Id.* at 2-3.

¹⁹ *Id.* at 2; Burgess 4 Utah, Statement of Organization (Dec. 15, 2020).

²⁰ Resp. at 2-3.

²¹ *Id.* at 2.

²² *Id.* at 3

²³ 52 U.S.C. § 30116(a)(1)(A); *see also* 11 C.F.R. § 110.1(b).

²⁴ 52 U.S.C. § 30116(f), *see also* 11 C.F.R. § 110.9.

²⁵ 52 U.S.C. § 30116(a)(1)(A), (2)(A); 11 C.F.R. §§ 110.1(a)–(b), 110.2(b)(1). *See also Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Disclosure Threshold*, 84 Fed. Reg. 2504, 2506 (Feb. 7, 2019).

refund, redesignate, or reattribute the excessive amount.²⁶ A committee treasurer may request a redesignation or reattribution by the contributor, but must refund the contribution if a redesignation or reattribution is not obtained within 60 days of the treasurer's receipt of the contribution.²⁷

In this matter, the Committee's 2020 July Quarterly, October Quarterly, and 30-Day Post General Reports reflect excessive contributions from 37 individuals and from one multicandidate committee totaling \$92,604.26.²⁸ The Committee does not dispute that it received these excessive contributions and that it failed to timely refund, reattribute, or redesignate most of them.²⁹ According to RAD's records, those excessive contributions were remedied from 79 to 262 days after their receipt, and therefore were not remedied within 60 days of the treasurer's receipt as required by Commission regulations. Accordingly, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions that it failed to timely refund, reattribute, or redesignate.

²⁶ 11 C.F.R. §§ 103.3(b)(3), 110.1(b).

²⁷ *Id.* §§ 103.3(b)(3), 110.1(b). The committee must notify contributors of the proposed reattribution or redesignation in writing and inform them that they may request a refund of the excessive portion of the contribution instead. *Id.* § 110.1(b)(5), 110.1(k)(3).

²⁸ Referral at Attach. 2.

²⁹ Resp. at 1. As noted *supra*, the Committee asserts that some of that amount was refunded timely (\$14,000) and that the amount that remained unremedied (\$1,829.41) was refunded after the Referral date.